

Attorney Docket No. 65.016-046

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#15

Applicant: Peter A. Hochstein)
Patentee: Relume Corporation)
Patent No.: 5,661,645)
Filed: June 27, 1996)
Issued: August 26, 1997)
Serial No.: 09/382,702)
Reissue Filed: August 24, 1999)
For: POWER SUPPLY FOR LIGHT)
EMITTING DIODE ARRAY)

RECEIVED

FEB 28 2001

OFFICE OF PETITIONS

Group Art Unit: 2838

Examiner: B. Vu

PETITION TO WITHDRAW FROM ISSUE

Assistant Commissioner of Patents
Washington, D.C. 20231

Dear Sir:

For the reasons set forth below, it is requested that the above identified reissue application be withdrawn from issue in order to present the attached Amendment Pursuant to Rule 312. Patentee/applicant did receive a Notice of Allowance and Issue Fee Due which was mailed from the Patent and Trademark Office on January 30, 2001. On February 5, 2001 patentee paid the Issue Fee Due.

Claims 5 and 6 of the allowed reissue application had previously been found to be obvious, in the context of a summary judgment motion, by the United States District Court for the Eastern District of Michigan in case no. 98-72360, Judge John Feikens. That decision was appealed to the

03/21/2001 15:15:05 00000027 141131 09302702

01 FEB 22 130.00 CH

United States Court of Appeals for the Federal Circuit which affirmed the district court's decision on February 8, 2001. On February 22, 2001 patentee filed its Petition for Rehearing before the Federal Circuit limited to claims 5 and 6. As set forth in the attached copy of the Petition for Rehearing, patentee seeks to clarify whether the Federal Circuit's February 8, 2001 decision precludes patentee from bringing a motion to reopen the judgment in the district court to further consider the non-obviousness of claims 5 and 6 in a summary judgment context in light of the Patent Office's consideration of the district court's summary judgment decision and the appellees' brief filed before the Federal Circuit and allowance of identical reissue claims 5 and 6.

To date there has been no decision on patentee's Petition for Rehearing before the Federal Circuit. Accordingly, on February 23, 2001, patentee filed a continuation application by Express Mail (no serial number for the continuation application has been received to date). It is patentee's intention that the present parent reissue application continue to issue without claims 5 and 6. In so doing all claims issuing in this parent reissue application will be canceled out of the continuation application filed on February 23, 2001 whereby the pendency of claims 5 and 6 can be maintained pending a clarification of their status before the Federal Circuit and potential further proceedings thereon before the district court.

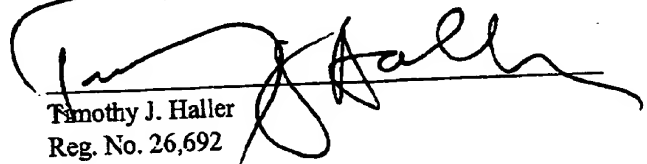
Necessarily the Federal Circuit's Feb. 8, 2001 decision on claims 5 and 6 was not known until after the payment of the Issue Fee herein on February 5, 2001 whereby the present amendment became necessary and was not earlier presented.

In summary, it is submitted that the above circumstances provide a good and sufficient reason why the Rule 312 Amendment, simply canceling claims 5 and 6, is necessary and was not earlier presented. It is further submitted that there is no reason to delay the issuance of the remainder

of the allowed claims in this application while preserving the pendency of claims 5 and 6 in the continuation application filed February 23, 2001 so that their status may be further considered by the Federal Circuit and the district court.

The fee set forth in Rule 17(i) as required in Rule 312(b) for this Petition should be debited against our firm's deposit account no. 14-1131.

Respectfully submitted,


Timothy J. Haller
Reg. No. 26,692

Dated: 2/28/01

Niro, Scavone, Haller & Niro
181 West Madison, Suite 4600
Chicago, Illinois 60602
(312) 236-0733